

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

CRAIG CUNNINGHAM

v.

WATTS GUERRA, LLP; et al.

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CIVIL ACTION NO. 5:22-cv-363-OLG

AFFIDAVIT OF ALICIA D. O'NEILL

STATE OF TEXAS *
 *
COUNTY OF BEXAR *

I, Alicia D. O'Neill, being duly being sworn on oath, depose, state, and declare as follows:

1. I am over 18 years of age, and I am of sound mind and capable of making this affidavit. I have personal knowledge of the facts stated in this affidavit and affirm that they are true and correct.
2. I am one of the partners in Watts Guerra LLP, which is a Texas limited liability partnership. I am also one of the partners in Watts Guerra LLC, which is a limited liability company that represents mass tort cases in the United States and Puerto Rico. For purposes of this affidavit, I will refer to both firms collectively and interchangeably as "Watts Guerra," although Plaintiff in this case has named only Watts Guerra LLP as a defendant.
3. This Affidavit is submitted in support of Defendants' Motion for Summary Judgment.
4. Watts Guerra and I personally, represent thousands of clients in claims against the manufacturers of Zantac (brand name of the generic drug ranitidine) for knowingly concealing and marketing this dangerous, cancer-causing drug for over 30 years.

5. I am the managing partner of the Watts Guerra Mass Tort Offices and have served in this role since June of 2019.

6. We began advertising in the Zantac campaign during my tenure at Watts Guerra and I personally made all the recommendations regarding contracting advertising companies and vendors to Mikal Watts and Frank Guerra. I also requested and made payments to the vendors and tracked their progress and reported to Mikal Watts and Frank Guerra.

7. Watts Guerra engages advertising companies in relation to Mass Torts specifically only to market (1) online (e.g. via social media and google) and through (2) radio, and (3) television. Watts Guerra has never, and will never, authorize any advertising firm to make outgoing, unsolicited telephone calls as a part of marketing. Watts Guerra prohibits this and it is well known in the Mass Tort industry that this is unethical and strictly prohibited. I have personally never heard of a Mass Tort advertising company engaging conduct of this kind.

8. I have reviewed all of the materials that Mr. Cunningham filed in this lawsuit including the names of the companies that he alleges contacted him and that he alleges are affiliated with Watts Guerra: Berken Media, Robert Kenyon, GurusAgent.com, and Consumer Case Helpline.

9. I also personally spoke with Mr. Cunningham on April 6, 2022 at his request, before he filed this lawsuit and advised him that Watts Guerra did not participate in the conduct he was alleging, that I was exclusively the person who deals with marketing and that I did not recognize or do business with Berken Media, Robert Kenyon, GurusAgent.com, and Consumer Case Helpline; that Watts Guerra was not connected to any of these alleged businesses in any manner, and that Watts Guerra only places calls to its own clients who have already signed valid contracts with Watts Guerra.

10. During that call, Mr. Cunningham stated that he found me to be intelligent and knowledgeable on these subjects but that “unless Mikal and Francisco wanted to pay him money” at that time that he would file a lawsuit.

11. Watts Guerra has never had any knowledge of the existence of or had any communication with Berken Media, Robert Kenyon, GurusAgent.com, and Consumer Case Helpline, other than a Cease and Desist letter that I wrote to them after Mr. Cunningham notified us of this alleged conduct, or any manner of relationship with Berken Media, Robert Kenyon, GurusAgent.com, and Consumer Case Helpline.

12. Counsel for Mr. Kenyon, Berken Media, and Consumer Case Helpline responded to our Cease and Desist letter as follows, alleging no relationship and stating that they are not distributing Watts Guerra contracts and materials:

Chambliss, Bahner & Stophel, P.C.
Liberty Tower
605 Chestnut Street, Suite 1700
Chattanooga, TN 37450
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Direct Dial (423) 757-0240
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Also Licensed In FL

April 29, 2022

VIA FEDERAL EXPRESS

Mikal Watts
Watts Guerra LLP
4 Dominion Drive, Bldg. 3, Ste. 100
San Antonio, TX 78257

Re: Notice to Cease and Desist

Dear Mr. Watts:

This law firm represents Berken Media, Robert Kenyon, and Consumer Case Helpline (collectively, “Berken Media”), and is in receipt of your letter dated April 21, 2022 (“Letter”) demanding that Berken Media cease and desist from using Watts Guerra client contracts, documents, name, and likeness.

Berken Media denies that it has engaged in any illegal activity. Berken Media confirms that it is not currently engaging in and will not engage in any “Activity”, as that term is defined in your Letter.

Sincerely,

A handwritten signature in cursive script that reads 'Catherine S. Dorvil'.
Catherine S. Dorvil

CSD/csd

13. I personally contacted every advertising company that Watts Guerra has authorized to do advertising in Zantac, all of whom enjoy a good professional reputation in the Mass Tort industry, and they all stated that they do not have any affiliation or professional relationship with Berken Media, Robert Kenyon, GurusAgent.com, and Consumer Case Helpline. They also explicitly stated that they did not engage these alleged businesses in any manner in relationship to the Watts Guerra Zantac campaign – nor would they ever do so.

14. I personally searched my email (as I am often sent solicitations from Mass Tort advertisers) and found that I have never received a communication even mentioning Berken Media, Robert Kenyon, GurusAgent.com, and Consumer Case Helpline.

15. I personally searched the internet for these companies, as I would for any Mass Tort vendor I had never heard of, and learned that they have defunct websites, social media that hasn't been used in many years, and/or no online profile at all. I also found that Berken Media has been sued before, currently for failing to produce viable leads to a personal injury firm who retained them.

16. I would never recommend that Mikal Watts and Frank Guerra engage companies with online footprints and reputations like Berken Media, Robert Kenyon, GurusAgent.com, and Consumer Case Helpline appear to enjoy.

17. I also personally searched the internet for Mr. Cunningham and found that he routinely files *pro se* lawsuits like the one that he has filed here against Watts Guerra and that journalists have written about his practice of so doing.

18. I personally requested that the Lead Coordinator, who works under Mikal, Frank, and me in the Mass Tort Offices, do a full search of our proprietary software database (where every piece of information we intake has been held for more than the last decade) for Berken Media, Robert Kenyon, GurusAgent.com, and Consumer Case Helpline. None

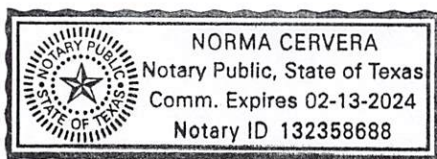
of these businesses have ever communicated with us in any manner or sent in even a single client contract. The people mentioned in the emails attached to the lawsuit do not appear anywhere in our database and the only communication we have involving them are in relation to Mr. Cunningham's lawsuit.

19. I personally requested that the Controller of the law firm who works under Mikal, Frank, and me in Accounting do a full search of our accounting database (where every piece of information we intake is held for more than the last decade) for Berken Media, Robert Kenyon, GurusAgent.com, and Consumer Case Helpline. None of these businesses have ever communicated with us in any manner nor have we paid them a single dollar, ever received a single bill from them, or received a payment from them.

20. Watts Guerra, and its advertising vendors, have no relationship with Berken Media, Robert Kenyon, GurusAgent.com, and Consumer Case Helpline.

Further, Affiant saith naught.

Dated this 14th day of June 2022.



Alicia D. O'Neill
Alicia D. O'Neill

Subscribed and sworn to before
me this 14th day of June 2022.

Norma Cervera

Notary Public – Texas
My Commission Expires: 02-13-2024